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OCT 16 2014

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD  
October 16, 2014

ROXANA LANDFILL, INC., )  
)  
Petitioner, )  
)  
v. ) PCB 15-65  
) (Third-Party Pollution Control Facility  
) Siting Appeal)  
VILLAGE BOARD OF THE VILLAGE OF )  
CASEYVILLE, ILLINOIS; VILLAGE OF )  
CASEYVILLE, ILLINOIS; and )  
CASEYVILLE TRANSFER STATION, )  
L.L.C., )  
)  
Respondents. )

 ORIGINAL

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VILLAGE OF FAIRMONT CITY, ILLINOIS, )  
)  
Petitioner, )  
)  
v. ) PCB 15-69  
) (Third-Party Pollution Control Facility  
) Siting Appeal)  
VILLAGE OF CASEYVILLE, ILLINOIS, )  
BOARD OF TRUSTEES and CASEYVILLE ) (Consolidated)  
TRANSFER STATION, L.L.C., )  
)  
Respondents. )

**HEARING OFFICER ORDER**

On October 6, 2014, respondents Village Board and Village of Caseyville (Village) filed objections to interrogatories and document production requests. Petitioner Roxana Landfill, Inc. (Roxana) filed a response on October 15, 2014. For the following reasons, the objections are overruled.

**INTERROGATORIES**

Roxana asked the Village to identify all persons with the Village who were subject to *ex parte* rules during the siting process. Additionally, Roxana asked the Village to identify all communications subject to *ex parte* rules between Caseyville Transfer Station and the Village from the date the siting application was allegedly filed to the date the Village voted to approve the application.

The Village objects on the grounds that these questions are vague and ambiguous as to the *ex parte* rules being referenced, and call for a legal conclusion as to who is subject to *ex parte* rules. Roxana responds that it is asking the Village what persons it designated in the adjudicatory process as being subject to *ex parte* rules, and that *ex parte* is not a vague or ambiguous term.

### **DOCUMENT PRODUCTION REQUESTS**

Roxana requested all documents pertaining to communications between the Village staff and Village Board Members or Mayor from the date the siting application was allegedly filed to the date of the Village's decision, and any other documents from January 2013 to present.

The Village objects on the grounds that the requests are vague, overly broad, unduly burdensome and not reasonably calculated to lead to relevant information. In its response, petitioner amends the request to apply specifically to documents relating to Caseyville Transfer Station. Roxana argues that the documents may lead to relevant information as to whether *ex parte* communications occurred, or whether there was a prejudgment of adjudicative facts.

### **DISCUSSION**

While the Board is generally confined to the siting authority's record when reviewing the appeal of a siting application, the Board may hear new evidence when considering whether the proceedings were fundamentally fair. Land and Lakes Co. v. PCB, 319 Ill. App. 3d at 48, 743 N.E. 2d at 197. Public hearing before a local governing body is the most critical stage of the site approval process. The manner in which the hearing is conducted, the opportunity to be heard, whether *ex parte* contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid elements in assessing fundamental fairness. American Bottom Conservancy v. Village of Fairmont City, PCB 00-200 (Oct. 19, 2000). The Board must consider the fundamental fairness of the procedures used by the respondent in reaching its decision.

The existence of *ex parte* contacts is a relevant factor in a determination of fundamental fairness. It may call for a legal conclusion for an interrogatory to ask whether violations of *ex parte* rules occurred; however, the identification of those individuals subject to *ex parte* rules does not by itself call for a legal conclusion. Requests for admissions of factual questions which might give rise to legal conclusions are not improper. PRS Int'l, Inc. v. Shred Pax Corp., 184 Ill.2d 224, 236, 703 N.E.2d 71, 77(1998). Additionally, the term *ex parte* is sufficiently specific in this context as the Village undoubtedly knows the identity of the decision makers and any other key players in the siting process. Therefore, the Village's objections to Roxana's interrogatories are overruled.

The purpose of discovery is to uncover all relevant information and information calculated to lead to relevant information. 35 Ill. Adm. Code 101.616(a). When a fundamental fairness issue is raised before the Board, the whole purpose of discovery is to attempt to uncover relevant evidence or evidence calculated to lead to relevant evidence that is outside the record, evidence that is presumably unknown to the party propounding the discovery.

In light of Roxana's amendment to the discovery request to limit the communications to those involving Caseyville Transfer Station, as well as the specific timeframes provided, the document requests are not vague or overly broad. No information was provided as to why the request would be unduly burdensome. Additionally, it may lead to evidence relevant to a fundamental fairness determination. Therefore, the Village's objections to petitioner's document requests are overruled.

**PETITIONERS' MOTION TO CLARIFY SEPTEMBER 30, 2014 HEARING OFFICER ORDER**

On October 15, 2014, Roxana moved to clarify the September 30, 2014 hearing officer order. Petitioner Village of Fairmont City joined in this motion. The hearing officer order stated that "[d]epositions will be scheduled for October 16-17, 2014." According to the motion, Roxana subsequently proposed to move the depositions to October 21-22, 2014 because confirmation from the Village had not been received for the earlier dates. Petitioners seek clarification and leave to proceed with depositions as witnesses are available.

On October 15, 2014, the Village filed a response and motion for sanctions asserting that the language in the hearing officer order was mandatory, and that Roxana failed to follow up with subpoenas for October 16-17. The Village requests that sanctions be imposed on Roxana for the willful and intentional violation of both the hearing officer's order and violation of the Board's rules.

Petitioners' motion for clarification is granted. The wording of the hearing officer order on September 30, 2014 was intended to note the parties' intentions with respect to scheduling depositions. It was agreed at the status call that witness availability needed to be checked, and it appears that Roxana has agreed to accommodate the Village as much as possible. While there has been a lack of communication and understanding between the parties with respect to scheduling these depositions, it appears that the Village's complaints of impropriety are procedural, not substantive. The request for sanctions is denied, and petitioners are granted leave to conduct depositions as needed.

Section 101.616 of the Board's procedural rules state that all discovery must be completed at least 10 days prior to the scheduled hearing unless the hearing officer orders otherwise. The Board accepted this case for hearing on September 18, 2014, and a hearing was set for October 28, 2014. Due to the expedited nature of this case, it is necessary for discovery to occur within ten days of hearing, especially as discovery disputes have delayed the exchange of information. If the parties need deadlines instituted for the remaining discovery, a status call can be scheduled, or the parties may submit a joint schedule.

On October 16, 2014, petitioners filed objections to respondent Caseyville Transfer Station's discovery requests. Any response must be emailed to the hearing officer by 6:00 a.m. October 20, 2014.

Unless otherwise ordered, the mailbox rule shall no longer apply to any document filed with the Board in this matter. Documents must be received by the Board on the due date to be considered timely filed. Additionally, unless otherwise ordered, all counsel in this case are required to timely serve documents to each other by fax or email unless the intended recipient agrees to another mailing method.

IT IS SO ORDERED.



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## CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 16, 2014, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 16, 2014:

John T. Therriault  
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